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THOMTE, MAZOUR & NIEBERGALL, L.L.C. 2120 S. 72ND STREET, SUITE 1111 OMAHA, NE 68124			KIM, CHRISTOPHER S	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/786,664  
Filing Date: February 25, 2004  
Appellant(s): CHRISTENSEN ET AL.

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Dennis L. Thomte  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed September 12, 2005 appealing from the Office action mailed April 22, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

**WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

The rejection of claims 1-5 under 35 U.S.C. 112, second paragraph, as being indefinite for reciting "a plurality of spaced-apart drive units" and "at least one of said

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drive units including a generally transversely extend base beam having first and second ends."

The reason for the withdrawal of the rejection is as follows. Initially, the Examiner took the position that the recitation "at least one of said drive units including..." defined a "drive unit" and that the "at least one" recitation can encompass one drive unit, but the recitation "plurality of spaced-apart drive units" required more than one drive unit. Therefore the claim was indefinite because it was uncertain whether the claimed invention required one drive unit or a plurality of drive units. In order to give definiteness to the claim language, the recitation "a plurality of spaced-apart drive units" has been considered to define a broad category of "drive units," and the recitation "at least one of said drive units..." has been considered to define a sub category of "drive units." It can be likened to a recitation of "a plurality of beams wherein at least one of said beams is an I-beam" or "a plurality of oranges wherein at least one of said orange is a Mandarin orange." But, while one of ordinary skill in the art would know the metes and bounds of "beams" and "oranges" from the terms themselves, one cannot reasonable determine the metes and bounds of the term "drive units" from the definition of the term. One might be led to the definition that a drive unit requires a unit which provides a drive function, but applicant's own claim construction does not require such an interpretation. A drive unit merely requires a first in-line drive assembly and a second in-line drive assembly which themselves require an elongated support member, a first driven wheel, and a second driven wheel. See claim 1. Therefore, a drive unit, which presumably requires a first in-line drive assembly and a

second in-line drive assembly (see specification, page 2, lines 7-24 and page 5, lines 10-25) does not require any drive function. It merely requires a “driven” function (the first and second “driven” wheels). This is further supported by claim 3, which requires a “drive motor.” Presumably, claim 1 does not require a “drive motor.” It appears that the term “drive unit” itself does not provide a definition per the claim construction used by applicant. Rather than holding the claims indefinite, the term “drive units” has been considered to be an incredibly broad recitation of whatever might constitute a drive unit further defined by lines 2 and 3 of claim 1. Lines 2 and 3 of claim 1 require the “drive units” to be spaced apart and support the elongated pipeline. In conclusion, the “drive units” can be anything which support the elongated pipeline and are spaced apart, but at least one of those drive units requires the generally transversely extending bases beam having first and second ends (and the first and second in-line drive assemblies).

The rejection of claims 1-5 under 35 U.S.C. 112, second paragraph, as being indefinite because the recitation of “a first in-line drive assembly” and “a second in-line drive assembly” recited in claim 1, lines 6 and 8, respectively, are double inclusions of the “drive units” recited in line 3 **is maintained.** The first and second in-line drive assemblies are sub-assemblies of the drive units. The claim should have been amended to read –the at least one drive unit further including a first in-line drive assembly pivotally connected to said base beam adjacent said first end thereof and a second in-line drive assembly pivotally connected to said base beam adjacent said second end thereof--.

#### (7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,131,833 Chapman 10-2000

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

According to the specification, page 2, lines 7-24 and page 4, lines 5-11, the first in-line drive assembly and the second in-line drive assembly appear to be sub-assemblies of the spaced-apart drive units. See also page 5, lines 10-25. Therefore, the recitation of the "first in-line drive assembly" and the "second in-line drive assembly" recited in claim 1, lines 6 and 8, respectively, appear to be double inclusions of the drive units recited in line 3. The claim should have been amended to read --the at least one drive unit further including a first in-line drive assembly pivotally connected to said base beam adjacent said first end thereof and a second in-line drive assembly pivotally connected to said base beam adjacent said second end thereof--. Applicant's claim construction is inconsistent. Applicant does not list the first and second drive assemblies as subassemblies of the at least one drive units but includes the elongated support member, first driven wheel, and the second driven wheel as subassemblies of the first and second drive assemblies. Applicant's specification discloses that the drive unit comprises a first and second in-line drive assemblies wherein the first and second

drive assemblies comprise an elongated support member, a first driven wheel, and a second driven wheel.

**Claims 1, 2, 4, 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Chapman (6,131,833).**

Regarding to claim 1, Chapman discloses:

a self propelled irrigation system including a pipeline **14** supported upon a plurality of spaced-apart drive units **22**;

at least one of said drive units **22** including a generally transversely extending base beam **24** (**horizontal beam between brace 40 and 96 in figures 4-7**) having first and second ends (**the two ends of the base beam 24**);

a first in-line drive assembly (**beam 60 and wheels 48 as shown in figure 4**) pivotally connected to said base beam **22** adjacent said first end thereof;

a second in-line drive assembly (**beam 60 and wheels 48 as shown in figure 5**) pivotally connected to said base beam **22** adjacent said second end thereof;

each of said first and second drive assemblies including:

- (a) an elongated support member **60**, having first and second ends (**the two ends of beam 60**), pivotally connected (**by shaft 62**), about a generally horizontal axis (**axis going into and out of the page in figures 4 and 5**) which is generally transverse to the

longitudinal axis of said base beam 24, to said base beam adjacent the associated end thereof;

- (b) a first driven wheel 48 (**one of the wheels 48 on beam 60**) rotatably mounted on said first elongated support member 60 (**this is assumed to be in reference to the elongated support member in sub paragraph (a)**) adjacent said first end thereof;
- (c) and a second driven wheel 48 (**the other one of the wheels 48 on beam 60**) rotatably mounted on said first elongated support member 60 (**this is assumed to be in reference to the elongated support member in sub paragraph (a)**) adjacent said second end thereof.

Regarding claim 2, Chapman further discloses said driven wheels 48 are positioned in-line laterally of said base beam 24 (**wheels 52 of wheels 48 are in-line and laterally positioned from the center line of base beam 24**) and laterally of said elongated support member 60 (**wheels 52 of wheels 48 are laterally position from elongated support member 26 which makes up member 60**).

Regarding claim 4, Chapman further discloses the pivotal connection 62 between said elongated support member 60 and said base beam 24 is located beneath said base beam 24 (**see figures 4-6**).

Regarding claim 5, Chapman further discloses the self-propelled irrigation system comprises a center pivot irrigation system 12.

#### **(10) Response to Argument**

Applicant's argument directed to the contradictory recitation of "a plurality of spaced-apart drive units" and "at least one of said drive units.." is moot because the rejection has been withdrawn.

Applicant asserts that the Examiner has failed to distinguish between the plurality of spaced-apart drive units 24 and the drive assemblies 34 and 36 pivotally mounted on opposite ends of the base beam in question. Applicant further asserts that the first in-line drive assembly and the second in-line drive assembly are not a double inclusion of the drive units recited in claim 3 (presumably, applicant meant line 3 of claim 1).

Applicant provides no support for his assertion. Arguedo, even assuming his assertion is correct, if the first and second in-line drive assemblies are not double inclusions of the drive units or at least one of the drive units which includes a generally transversely extending base beam having first and second ends, what would or can constitute a drive unit? If applicant's assertion is true, the at least one drive unit merely requires a generally transversely extending base beam having a first and second ends and the first and second in-line drive assemblies are separate elements. Then the term "drive unit" would be totally misleading because merely a transversely extending base beam would suffice as a drive unit. This is not what is disclosed by the specification on page 2, lines 7-24 and page 4, lines 5-11 and page 5, lines 10-25. The specification discloses that the drive unit comprises a first and second in-line drive assemblies wherein the first and second drive assemblies comprise an elongated support member, a first driven wheel, and a second driven wheel. As indicated above, applicant's claim construction is inconsistent with the specification, and as presented, claim 1 recites a double inclusion

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of the drive unit(s) by specifying the drive unit(s) and the first and second in-line drive assemblies as elements of the combination. The first and second in-line drive assemblies are sub assemblies of the drive unit(s).

Applicant argues that wheel assemblies 48 of Chapman are idler wheel assemblies and not driven wheels. The reason for applicant's assertion that Chapman's idler wheels are not driven wheels is uncertain. It appears that applicant has a preconceived definition of "driven wheels" which is narrower or inconsistent with the broadest reasonable interpretation. It appears that applicant is arguing that the idler wheels 48 of Chapman are not "driving" wheels. In Chapman, wheel 64 provides the driving force. But applicant does not claim "driving wheels." Claim 1 clearly recites and applicant argues "driven wheels." If Chapmens drive tower 22 were suspended off the ground, wheels 48 would turn. Wheel 64 would drive/move belt 50 which in turn would turn/spin/rotate/drive wheels 48. Wheels 48 would be driven by wheel 64 through belt 50. One of ordinary skill in the art can analogize Chapmen's wheel being driven to an internal combustion engine. In a typical internal combustion engine, the camshaft is driven by the crankshaft via the timing belt/chain. The camshaft is driven but does not provide any driving force to turn itself. In other words, if the timing belt/chain were removed or the crankshaft stopped, the camshaft would stop rotating. Therefore, Chapman's idler wheel 48 constitutes a "driven wheel" because it is driven by wheel 64 via belt 50.

Applicant argues that Chapman's wheels 48 are not positioned laterally of the base beam. Applicant's claims 1 and 2 reads on Chapman's wheels 52 of wheels 48 as

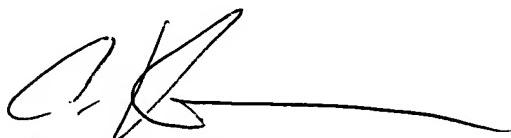
the driven wheels. Wheels 52 are laterally of the base beam 24 because wheels 52 are on one side of the longitudinal centerline of base beam 24. Therefore, wheels 52 are on one side of base beam 24, i.e. laterally of base beam 24.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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